IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

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WRIT PETITION NO : 26325 of 2001

Between:

N.V.Narayana S/o Basavaiah, Hindu, aged 50 years,
R/o Peddadornala (V), Dornala (M),
Prakasam Dist.

..... PETITIONER

AND

1 The District Collector, Prakasam District, Ongole
2 The Revenue Divisional Officer,
Markapur, Prakasam Dist.
3 The Mandal Revenue Officer,
Dornala (M), Prakasam Dist.
4 The Executive Engineer, R & B Department,
Markapur, Prakasam Dist.
5 The Deputy Executive Engineer, R & B Dept.,
Markapur, Prakasam District.
6 The Assistant Executive Engineer, R & B Department,
Pedda Dornala (V) & (M), Prakasam Dist.
7 Vannampally Narayana, Retd. Lecturer
Pedda Dornala (V), Dornala (M), Prakasam Dist.
8 Madugula Ranga Reddy S/o Venkat Reddy, Beedi Bunk,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
9 Smt. Akula Buvvamma, Bunk,
Pedda Dornala (V), Dornala (M), Prakasam Dist.

10 Neruri Srinu S/o Venkateswarlu, Watch Shop,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
11 Akula Pullaiah S/o Chelamaiah. Bunk,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
12 Golla Rama Rao S/o Chennaiah, C/o Pothu Avulaiah,
Readymade Shop, Pedda Dornala (V), Dornala (M),

Prakasam Dist.
13 Shaik Poola Babu S/o Hasan Saheb, Flowers Bunk,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
14 Boggarapu Tirupalu Chetty S/o Venkatasubbaiah, Cool Drink Shop,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
15 Mukund Singh S/o Somesingh, Sweet Vendor,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
16 Kalle Nagarjuna S/o Kota Avulaiah, Watch Shop,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
17 Yeruva Koti Reddy S/o Malla Reddy, Beedi Bunk,
Pedda Dornala (V), Dornala (M), Prakasam Dist.

18 Dasari Narasaiah, Flower Shop,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
19 Yerukapati Samuel S/o Yesu, Cobbler,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
20 Shaik Saddam Hussain s/o Dadakhan, Military Hotel,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
21 Shaik Rahamtulla, Cycle Shop,
Pedda Dornala (V), Dornala (M), Prakasam Dist.
22 Shaik Buddekhan, Coconut Bunk,
Pedda Dornala (V), Dornala (M), Prakasam Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents 1 to 6 in not initiating eviction proceedings against the respondents 7 to 22 under the A.P. Land Encroachment Act of 1905 in terms of the Judgment rendered in W.P.No.11463 of 2001 dated 13-6-2001 as illegal, arbitrary and consequently direct the respondents 1 to 6 to initiate eviction proceedings against the respondents 7 to 22 under the A.P. Land Encroachment Act of 1905 forthwith.

For the Petitioner: MR.M.SUBBA REDDY,Advocate.

For the Respondent Nos.1 to 3: G.P. for Assignment and Revenue.

For the Respondent Nos.4 to 6: G.P. for Roads and Buildings.

For the Respondent Nos.7 to 22: M/s. P.RAGHAVENDRA REDDY & B.Bhaskar Reddy, Advocates.

The Court made the following :

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THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.26325 OF 2001

O R D E R :

This Writ Petition is filed seeking to issue a writ of Mandamus to declare the action of the Respondents 1 to 6 in not initiating eviction proceedings against the Respondents 7 to 22, in terms of the Judgment of this Court in Writ Petition No.11463 of 2001, dated 13.06.2001, as illegal and arbitrary.

The petitioner is the lessee of the Government land, to an extent of Ac.0.04 cents, situated in Survey No.11A/2B2 of Pedda Dornala village, Dornala Mandal, Prakasam District. The said lease was granted by the Government vide G.O.Ms.No.599, Revenue (Assignment. II) Department dated 27-7-1999, for a period of twenty five years, for the purpose of constructing shopping complex. Earlier several Writ Petitions were filed questioning grant of lease and the said writ petitions were dismissed. It is stated by the learned Counsel for the petitioner that in one of the cases, matter was also carried to Supreme Court by way of Special Leave Petition and the same was ended in dismissal.

Some of the respondents among 7 to 22, have earlier filed Writ Petition No.11463 of 2001 questioning removal of their wooden bunks, which are erected nearby the shopping complex constructed by the petitioner, as otherwise than due process of law. The said Writ Petition was disposed by order dated 13-06-2001 with the following directions:

"…The respondents are directed not to evict the

> petitioners from the land in question without following due process of law, if not already evicted as on today. However, it is open for the respondents to initiate appropriate proceedings under law for eviction of the petitioners, if their wooden bunks are causing inconvenience or obstruction for free flow of traffic."

The present Writ Petition is filed, stating that respondents 7 to 22 have encroached on the road margin, in-front of the shopping complex construction by the petitioner and there is no free access to the said complex, in view of the said encroachments, and, respondents 1 to 6 are not taking any action against respondents 7 to 22 by initiating proceedings under the A.P. Land Encroachment Act, 1905, in terms of the Judgment of this Court in Writ Petition No.11463 of 2001, dated 13-6-2001.

It is to be noted, in the earlier Writ Petition, when some of the respondents 7 to 22 herein, have approached this Court on the ground that the authorities are taking steps for removal of their bunks, without conducting enquiry and high-handedly, this Court has directed not to evict them without following due process of law. In the said order, this Court left open to the respondents therein to initiate appropriate proceedings for eviction, if the wooden bunks erected by them are causing inconvenience or obstructing free flow of traffic.

In the counter affidavit filed on behalf of the respondents, it is stated that proceedings are already initiated under A.P. Land Encroachment Act, 1905 against respondents 7 to 22. Whether erection of bunks and occupation of the land by the respondents 7 to 22 is by way of encroachment or otherwise, is a matter for enquiry by the competent authority as per the provisions under A.P. Land Encroachment Act, 1905. Merely because the petitioner has constructed shopping complex, he is not entitled to seek direction from this Court by way of Mandamus to initiate proceedings for eviction against respondents 7 to 22 under A.P. Land Encroachment Act, 1905. If the respondents 7 to 22 have encroached the land in question, it is always open for the

respondent authorities to conduct enquiry and pass appropriate orders, as per the procedure contemplated under A.P. Land Encroachment Act, 1905. In absence of any direction for removal of encroachments in the order passed by this Court earlier in Writ Petition No.11463 of 2001, it is not open for the petitioners to plead that action of the respondents in not initiating proceedings under A.P. Land Encroachment Act, 1905 is illegal. In view of the averments of the respondents 1 to 6 in the counter affidavit that the respondent authorities have already initiated proceedings under A.P. Land Encroachment Act, 1905, I dispose of the Writ Petition keeping open to the respondent authorities to proceed with the enquiry and pass appropriate orders, in accordance with law.

The Writ Petition is accordingly disposed of. No costs.

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JUSTICE R.SUBHASH REDDY

DATED: 25-6-2004.

CS/MSNR.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

TO

1. The District Collector, PrakasamDistrict, Ongole.
2. The Revenue Divisional Officer, Markapur, Prakasam District.

3. The Mandal Revenue Officer, Dornala Mandal, Prakasam District.

4. The Executive Engineer, R & B Department, Markapur, Prakasam District.

5. The Deputy Executive Engineer, R & B Department, Markapur, Prakasam District.

6. The Assistant Executive Engineer, R & B Department, pedda Dornala Village and Mandal, Prakasam District.

7. Two C.Cs to G.P. for Roads and Buildings, High Court Buildings, Hyderabad. (O.U.T.)

8. Two C.D. copies.